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**FIRST SUPERVISORY NOTICE**

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To: **Ilfracombe and District Credit Union Limited**

Of: **1 Church Street  
Ilfracombe  
Devon  
EX34 8HA**

Firm reference number: **213859**

Dated: **3 February 2011**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") has taken the following action**

**1. ACTION**

1.1. For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the "Act"), the FSA has varied the permission granted to Ilfracombe and District Credit Union Limited ("IDCU") pursuant to Part IV of the Act ("IDCU's Part IV permission"), by removing its regulated activity with immediate effect. Accordingly, IDCU's Part IV permission no longer includes the regulated activity of accepting deposits.

1.2. The FSA has further varied IDCU's Part IV permission pursuant to sections 43 and 48 of the Act by including the following requirements, namely that IDCU must not:

- (a) make new loans, or make further advances in relation to, or otherwise vary the terms of, any existing loans;
- (b) redeem any member's shares;
- (c) repay any deposits;

- (d) effect any share to loan transfers; or
  - (e) without the consent of the FSA, make any payment, or otherwise dispose of, deal with or diminish the value of any of its assets, except the payment of expenses incurred in the ordinary course of IDCU's business.
- 1.3. The expenses referred to in paragraph 1.2.(e) above do not include gifts, or payments of unusual or significant amounts to IDCU's employees or officers or any persons connected to them.
- 1.4. The FSA has also varied IDCU's Part IV permission by including the following requirements, namely that within 14 days it must:
  - (a) advise in writing all members of IDCU that it is no longer permitted by the FSA to carry on accepting deposits and is subject to the other restrictions contained within this First Supervisory Notice; and
  - (b) provide the FSA with a copy of the written advice sent to all members pursuant to 1.4.(a) above, together with a list of all members to whom such advice has been sent.
- 1.5. The terms of the requirements referred to in paragraph 1.2. above do not extend to the repayment of loans by members or the receipt of loan interest on loans.

## **2. REASONS FOR ACTION**

### **Summary**

- 2.1. The FSA has concluded, on the basis of the facts and matters described below, that IDCU is failing to satisfy the threshold conditions set out in Part 1 of Schedule 6 to the Act (the "Threshold Conditions"). IDCU is failing to satisfy Threshold Condition 5 (Suitability) in that, in the opinion of the FSA, it has not satisfied the FSA that it is a fit and proper person having regard to all the circumstances, including the need to ensure that its affairs are conducted soundly and prudently and in compliance with proper standards. IDCU has also failed to comply with Principle 11 (Relations with regulators) of the FSA's Principles for Businesses (the "Principles") under which firms must co-operate with the FSA.
- 2.2. The FSA considers that IDCU should not be permitted to accept new deposits when it has failed to provide audited financial information to, and reply adequately to communications from, the FSA.
- 2.3. The FSA considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers, for the action specified above to take immediate effect.

### **Relevant Statutory Provisions**

- 2.4. The FSA’s regulatory objectives established in section 2(2) of the Act include the protection of consumers.
- 2.5. Section 45 of the Act authorises the FSA to exercise the following powers:
- (1) to vary an authorised person’s permission where it appears to the FSA that such person is failing to satisfy the Threshold Conditions or where it is desirable to exercise that power in order to protect the interests of consumers or potential consumers;
  - (2) to vary such a permission by removing a regulated activity from those for which the permission is given; and
  - (3) to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate.
- 2.6. Section 43(3) of the Act permits a requirement to extend to activities which are not regulated activities.
- 2.7. Section 48 of the Act authorises the FSA to vary an authorised person’s Part IV permission so as to alter an assets requirement imposed on him or to impose such a requirement on him.
- 2.8. Section 53(3) of the Act allows such variations to take effect immediately only if the FSA, having regard to the ground on which it is exercising its own initiative power, reasonably considers that it is necessary for the variations to take effect immediately.

### **Relevant Handbook Provisions**

- 2.9. In exercising its power to vary a Part IV permission, the FSA must have regard to guidance published in the FSA Handbook of rules and guidance (the “Handbook”). The main considerations relevant to the action specified above are set out below.

#### Relevant Principle

- 2.10. Principle 11 (Relations with regulators) requires a firm to deal with its regulator in an open and co-operative way and to disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

#### Relevant Rules

- 2.11. FSA Rule SUP 16.12.5R in the Supervision Manual (“SUP”) requires a credit union to submit an annual return (“CY”).

- 2.12. SUP 16.12.7R requires that credit unions submit extended financial data (in the CY) annually, seven months after the financial year end.
- 2.13. FSA Rule CRED 14.10.10R in the Credit Unions Sourcebook (“CRED”) requires that:
- “(1) Every *credit union* must send to the FSA a copy of its audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 (CRED 14 Annex 1G);
  - (2) The accounts must:
    - (a) be made up for the period beginning with the date of the *credit union's* registration or with the date to which the *credit union's* last annual accounts were made up, whichever is the later, and ending on the *credit union's* most recent financial year end; and
    - (b) accompany the annual return submitted to the FSA under SUP 16.12.5R (see CRED 14.10.7G), unless they have been submitted already.”

#### Relevant Regulatory Guidance

- 2.14. Guidance on the Threshold Conditions is set out in the part of the Handbook entitled Threshold Conditions (“COND”), and Guidance on the application of the Threshold Conditions to Credit Unions is set out in CRED.

#### *Guidance concerning the Threshold Conditions for Credit Unions – CRED 5*

- 2.15. CRED 5.1.5G states that the Threshold Conditions must be met on a continuing basis by credit unions, and states that failure to meet one of the conditions is sufficient grounds for the exercise by the FSA of its powers.
- 2.16. CRED 5.2.1G(5) states that the FSA must be satisfied that a credit union is “fit and proper” to be authorised and permitted to carry on regulated activities.
- 2.17. CRED 5.2.4G allows the FSA to vary a credit union’s Part IV permission on its own initiative if it appears that the credit union is failing, or is likely to fail, to satisfy the Threshold Conditions.

#### *Guidance concerning Threshold Condition 5: Suitability (paragraph 5, Schedule 6 to the Act) – COND 2.5*

- 2.18. COND 2.5.1UK reproduces the relevant statutory provision that the person concerned must satisfy the FSA that he is a fit and proper person having regard to all the circumstances including, among other things, the need to ensure that his affairs are conducted soundly and prudently.

- 2.19. COND 2.5.2G(1) requires the firm to satisfy the FSA that it is “fit and proper” to have Part IV permission. COND 2.5.2G(2) requires the FSA to take into consideration anything that could influence a firm’s continuing ability to satisfy the Threshold Condition relating to suitability, when forming its opinion as to whether the firm is a fit and proper person.
- 2.20. COND 2.5.6G(1) requires the FSA to take into account whether the firm has been open and co-operative in its dealings with the FSA and is ready, willing and organised to comply with the requirements and standards under the regulatory system. Such requirements include the obligation to submit financial returns.

### **Other Relevant Regulatory Provisions**

- 2.21. The FSA’s policy in relation to its enforcement powers is set out in the Enforcement Guide (“EG”).

#### EG 8 – The FSA’s general approach to exercising the own-initiative power under section 45 of the Act to vary a firm’s Part IV permission: the FSA’s policy

- 2.22. EG 8.1B requires the FSA to have regard to its regulatory objectives and the range of regulatory tools that are available to it.
- 2.23. EG 8.5 provides that the circumstances in which the FSA will consider exercising its power include where the FSA has serious concerns that the authorised person has breached requirements imposed on it by or under the Act (including the Principles and rules) and the breaches are material in number or individual seriousness.
- 2.24. EG 8.9 includes among the factors which will determine whether the urgent exercise of the FSA’s own-initiative power is an appropriate response to serious concerns, the extent of any loss or risk of loss or other adverse effect on consumers and the steps the authorised person has taken or is taking to address the issue.
- 2.25. EG 8.10 provides that when varying a Part IV permission at its own-initiative under its section 45 power, the FSA may include in the Part IV permission as varied any limitation or restriction which it could have imposed if a fresh permission were being given in response to an application under section 40 of the Act.
- 2.26. EG 8.12 provides examples of requirements that the FSA may consider including in a firm’s Part IV permission when exercising its own-initiative power. These include imposing a requirement that prohibits the disposal of, or other dealing with, any of the firm’s assets or restricts those disposals or dealings.

## **Facts and matters relied on**

- 2.27. IDCU is a version 1 credit union, with eleven approved persons, all of whom are directors. According to its Quarterly Return submitted to the FSA for the period ended 31 December 2010, it had 591 members and 104 juvenile depositors.
- 2.28. IDCU has failed to submit its CY or its audited annual accounts to the FSA for the year ended 30 September 2009 (the “return and audited accounts”), despite repeated requests and warnings from the FSA. The annual return and audited accounts should have been submitted to the FSA by 30 April 2010.

## **Conclusions**

- 2.29. The facts and matters described above lead the FSA, having regard to its regulatory objectives to the following conclusions:
- in breach of SUP 16.12.5R, SUP 16.12.7R and CRED 14.10.10R, IDCU has failed to submit the return and accounts;
  - IDCU, by failing to submit the return and accounts, despite repeated requests for such information from the FSA, has failed to comply with Principle 11 (Relations with regulators) under which a firm must deal with its regulator in an open and co-operative way;
  - IDCU, by failing to submit the return and accounts, despite repeated requests for such information from the FSA, is failing to satisfy the FSA that it is conducting its business soundly and prudently and in compliance with proper standards;
  - these failures are material in relation to the regulated activity for which IDCU has permission and it therefore fails to satisfy Threshold Condition 5 (Suitability);
  - the risk of loss or other adverse effect on consumers from IDCU’s failings, causes the FSA to have serious concerns about IDCU, and the exercise of the FSA’s own-initiative powers to vary IDCU’s Part IV permission with immediate effect is an appropriate response to those concerns; and
  - the variation of IDCU’s Part IV permission should take immediate effect to address the FSA’s serious concern that it is not a fit and proper person to conduct the regulated activity it carries on.

## **3. DECISION MAKER**

- 3.1. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Chairman of the Regulatory Decisions Committee.

#### **4. IMPORTANT**

- 4.1. This First Supervisory Notice is given to IDCU under section 53(4) and in accordance with section 53(5) of the Act, and is being served on IDCU at the principal place of business last notified by IDCU to the FSA. The following statutory rights are important.

##### **The Tribunal**

- 4.2. IDCU has the right to refer the matter to which this First Supervisory Notice relates to the Upper Tribunal (Tax and Chancery Chamber) (the “Tribunal”). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, IDCU has 28 days from the date on which this First Supervisory Notice given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by IDCU (or on IDCU’s behalf) and filed with a copy of this First Supervisory Notice. The Tribunal’s address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: [financeandtaxappeals@tribunals.gsi.gov.uk](mailto:financeandtaxappeals@tribunals.gsi.gov.uk)). Further details are contained in “Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)” which is available from the Upper Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

- 4.3. IDCU should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing with the Tribunal. A copy of the reference notice should be sent to Simone Bebbington at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

##### **Representations**

- 4.4. IDCU has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If IDCU wishes to make written representations it must do so by 9 March 2011 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Lynn Cheesman, Regulatory Decisions Committee Professional Support Services. The address of the Regulatory Decisions Committee Professional Support Services is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If IDCU wishes to make oral representations, it should inform the FSA of its intention to do so by 14 February 2011. If IDCU does not notify the FSA by 14 February 2011, it will not, other than in exceptional circumstances, be able to make oral representations.

##### **Confidentiality and publicity**

- 4.5. IDCU should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). IDCU should also note that section 391 of the Act requires the FSA when the First Supervisory Notice takes effect (and this First

Supervisory Notice has immediate effect), to publish such information about the matter as it considers appropriate.

**FSA contacts**

- 4.6. If IDCU has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Lynn Cheesman (direct line: 020 7066 3192) or Jackie Noonan (direct line: 020 7066 3074) of the Regulatory Decisions Committee Professional Support Services at the FSA.
- 4.7. For more information concerning this matter generally, IDCU should contact Simone Bebbington (direct line: 020 7066 0666 / fax: 020 7066 0667), Enforcement and Financial Crime Division at the FSA.

**Tim Herrington**  
**Chairman, Regulatory Decisions Committee**